

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF MISSOURI**

**FIRST NATIONAL INSURANCE  
COMPANY OF AMERICA  
and  
SAFECO INSURANCE COMPANY  
OF AMERICA,**

**Plaintiffs,**

**v.**

**JACOBSMEYER-MAULDIN  
CONSTRUCTION COMPANY, INC.  
JAMES C. JACOBSMEYER,  
LISA JACOBSMEYER,  
CURTIS MAULDIN, JR.,  
and SUSAN MAULDIN,**

**Defendants.**

**Case No. 12-CV-00226-DGK**

**DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT**

COME NOW Defendants Jacobsmeyer-Mauldin Construction Company, Inc., James C. Jacobsmeyer, Lisa Jacobsmeyer, Curtis Mauldin, Jr., and Susan Mauldin ("Defendants"), by and through undersigned counsel, and for their Answer to Plaintiffs' Complaint, state as follows:

**JURISDICTION AND VENUE**

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint, and therefore deny the same.
2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Complaint, and therefore deny the same.
3. Defendants admit the allegations contained in Paragraph 3 of the Complaint.
4. Defendants admit the allegations contained in Paragraph 4 of the Complaint.
5. Defendants admit the allegations contained in Paragraph 5 of the Complaint.

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Complaint, and therefore deny the same.

7. Defendants deny the allegations contained in Paragraph 7 of the Complaint.

8. Defendants deny the allegations contained in Paragraph 8 of the Complaint.

9. Defendants deny the allegations contained in Paragraph 9 of the Complaint.

#### **STATEMENT OF FACTS**

10. Defendants admit the allegations contained in Paragraph 10 of the Complaint.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 and all subsections of the Complaint, and therefore deny the same.

#### **Thomas Ultican Project**

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint, and therefore deny the same.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Complaint, and therefore deny the same.

#### **Blue Springs South Project**

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Complaint, and therefore deny the same.

15. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the Complaint, and therefore deny the same.

16. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint, and therefore deny the same.

17. Defendants are without knowledge or information sufficient to form a belief as to

the truth of the allegations in Paragraph 17 of the Complaint, and therefore deny the same.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint, and therefore deny the same.

**Burnham 310 Apartment Project**

19. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint, and therefore deny the same.

20. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint, and therefore deny the same.

21. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint, and therefore deny the same.

**Fringe Benefit Bond**

22. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of the Complaint, and therefore deny the same.

23. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 of the Complaint, and therefore deny the same.

**Other Bond Claims**

24. Defendants deny the allegations contained in Paragraph 24 of the Complaint.

**Expenses**

25. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 of the Complaint, and therefore deny the same.

26. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Complaint, and therefore deny the same.

### **RELIEF SOUGHT**

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint.
28. Defendants admit the allegations contained in Paragraph 28 of the Complaint.
29. Defendants deny the allegations contained in Paragraph 29 of the Complaint.
30. Defendants deny the allegations contained in Paragraph 30 of the Complaint.
31. Defendants deny the allegations contained in Paragraph 31 of the Complaint.
32. Defendants deny the allegations contained in Paragraph 32 of the Complaint.

### **AFFIRMATIVE DEFENSES**

COME NOW Defendants, and in further answer to the Complaint, state the following affirmative defenses:

1. Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted.
2. Plaintiffs first materially breached the agreements that form the basis of their claims, and therefore, Plaintiffs are not entitled to recover thereon. Plaintiffs' breaches include, but are not limited to, their failure to fully and properly investigate the claims made, and their failure to provide Defendants with proper credits and/or set-offs.
3. Plaintiffs' damages, if any, should be barred and/or reduced because Plaintiffs failed to mitigate their alleged damages.
4. Plaintiffs are stopped from enforcing the agreements sued upon.
5. Plaintiffs have waived their right to enforce the agreements upon which they have sued.
6. Defendants hereby incorporate by reference any other and further affirmative defenses identified through the course of discovery in this matter, and reserve the right to so

amend their affirmative defenses.

Respectfully submitted,

DESAI EGGMANN MASON LLC

*/s/ Spencer P. Desai*

By: \_\_\_\_\_

SPENCER P. DESAI (#39877MO)  
RYAN J. MASON (#56167MO)  
7733 Forsyth Boulevard, Suite 2075  
St. Louis, Missouri 63105  
(314) 881-0800  
Fax No. (314) 881-0820  
[sdesai@demlawllc.com](mailto:sdesai@demlawllc.com)  
[rmason@demlawllc.com](mailto:rmason@demlawllc.com)

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading is served by electronic filing in the CM/ECF system of the United States District Court for the Western District of Missouri on this 20<sup>th</sup> day of April, 2012 to:

Carol Z. Smith  
Bruce B. Waugh  
Gilliland & Hayes, P.A.  
8717 W. 110<sup>th</sup> Street  
Overland Park, KS 66210

*/s/ Nancy Neske*